

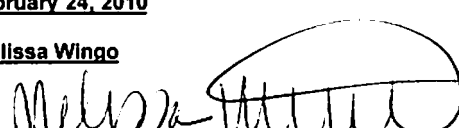
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Ralf Keller	§	Group Art Unit:	2454
		§		
Application No.	10/595,473	§	Examiner:	Coulter, Kenneth R
		§		
Filed:	October 27, 2006	§	Confirmation No:	1188
		§		
Attorney Docket No: P18906-US1				
Customer No.: 27045				

For: Multi-user streaming

Via EFS-Web

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

<p align="center">CERTIFICATE OF MAILING OR TRANSMISSION</p> <p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage for First class or Express mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or being facsimile transmitted to the USPTO at (571) 273-8300 or being transmitted via EFS-Web on the date indicated below.</p> <p>Date: <u>February 24, 2010</u></p> <p>Name: <u>Melissa Wingo</u></p> <p>Signature: </p>

Petition under 37 C.F.R. §1.181, 1.182 to Withdraw a Holding of Abandonment

The Applicants hereby petition the Director to withdraw the Notice of Abandonment issued on November 24, 2009.

FACTS

- 1.) A Notice of Abandonment was issued by the Examiner on November 24, 2009, on the basis that Applicants had not filed a response to a Non Final Office Action mailed on 07 November 2008. (Exhibit A)
- 2.) Applicants never received a Non Final Office Action dated November 7, 2008.
- 3.) Upon receipt of the Notice of Abandonment, the Applicants checked PAIR and discovered that on November 17, 2008, the Non Final Office Action was "returned to USPTO as undelivered." (Exhibit B)

- 4.) Applicants printed a copy of the document associated with the PAIR entry for the undelivered mail, the first page of which is a copy of the envelope with no delivery address visible in the envelope window. (Exhibit C)
- 5.) The copy of the address sheet for the office action (Exhibit D), stamped with the date of return to the USPTO on November 17, 2008, does not reflect any creases from having been properly folded and placed in the envelope whereby the address would properly appear in the envelope address window.

USPTO PRACTICE

MPEP Section 707.13 states the practice of the USPTO with respect to returned Office Actions

707.13 Returned Office Action

Office actions are sometimes returned to the Office because the United States Postal Service has not been able to deliver them. **Upon receipt of the returned Office action, the Technology Center (TC) technical support staff will check the application file record to ensure that the Office action was mailed to the correct correspondence address. If the Office action was not mailed to the correct correspondence address, it should be stamped "remailed" with the remailing date and mailed to the correct correspondence address.** The period running against the application begins with the date of remailing. **If the Office action was mailed to the correct correspondence address and it was addressed to an attorney or agent, a letter may be written to the inventor or assignee informing him or her of the returned action.** The period running against the application begins with the date of remailing. *Ex parte Gourtoff*, 1924 C.D. 153, 329 O.G. 536 (Comm'r Pat. 1924).

If the Office is not finally successful in delivering the letter, it is placed, with the envelope, in the file wrapper. For an Image File Wrapper (IFW), a copy of the letter* and **a copy of the envelope should be added to the IFW** (see IFW Manual). If the period dating from the remailing elapses with no communication from applicant, the application is abandoned.
(emphasis added)

Furthermore, according to MPEP §711.03(c), ¶1.A.:

In *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's

representative did not receive the original Notice of Allowance. Under the reasoning of *Delgar*, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of *Delgar* is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133).

To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. (emphasis added)

ARGUMENT

According to PAIR, the Non Final Office Action was returned to the USPTO as undelivered. Under USPTO practice, however, the correct correspondence address should be verified and the correspondence remailed. There is no record in PAIR of such remailing. Furthermore, the copy of the envelope in the Image File Wrapper (Exhibit C) does not show a delivery address visible in the envelope window, nor does the copy of the address sheet for the office action (Exhibit D), stamped with the date of return to the USPTO on March 2, 2007, reflect any creases from having been properly folded and placed in the envelope whereby the address would properly appear in the envelope address window. Therefore, it appears that the Non Final Office Action was not delivered to the Applicants because of a failure of the USPTO to properly mail, and remail, the correspondence to the Applicants.

Thus, the Applicants should not be required to file a Petition for Revival or pay the requisite fee. However, if the United States Patent and Trademark Office finds otherwise, please pay the proper fee from Deposit Account Number 501379.

Under the showing specified in MPEP §711.03(c), ¶1.A., the undersigned attests that:

- 1.) the Non Final Office Action dated November 7, 2008, was not received by the practitioner; and,
- 2.) a search of the file jacket and docket records indicates that the Office communication was not received.

Also, submitted herewith (Exhibit E) is a copy of Applicant's docket record, where the non-received Non Final Office Action would have been entered had it been received and docketed, showing the proper docketing of prior office actions ("Official Action").

RELIEF REQUESTED

The Applicants respectfully request that the Notice of Abandonment be withdrawn and the Non Final Office Action dated November 7, 2008, be properly remailed.

* * *

DECLARATION

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

A handwritten signature in black ink, reading "Sidney L. Weatherford". The signature is fluid and cursive, with the first name "Sidney" being more prominent.

Sidney L. Weatherford
Registration No. 45,602

Date: February 24, 2010

Ericsson Inc.
6300 Legacy Drive, M/S EVR 1-C-11
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Appl. No. 10/595,473
Attorney Docket No. P18906-US1
EUS/J/P/10-3083

EXHIBIT A



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,473	10/27/2006	Ralf Keller	P18906-US1	1188
27045	7590	11/24/2009		
ERICSSON INC. 6300 LEGACY DRIVE M/S EVR 1-C-11 PLANO, TX 75024			EXAMINER COULTER, KENNETH R	
RECEIVED NOV 30 2009 EUS LEGAL DEPT.			ART UNIT 2454	
			PAPER NUMBER	
			MAIL DATE 11/24/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of Abandonment

Application No.

10/595,473

Examiner

Kenneth R. Coulter

Applicant(s)

KELLER ET AL.

Art Unit

2454

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 07 November 2008.
- (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
- (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
- (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
- (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
- (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
- (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
- (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
- (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
- (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

see attached interview summary

/Kenneth R Coulter/
Primary Examiner, Art Unit 2454

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Continuation of Substance of Interview including description of the general nature of what was discussed: Examiner contacted Applicant's representative, Sidney Weatherford, to inquire about the status of the application since no reply to the non-final office action mailed 11/7/08 has been received. Applicant's representative indicated that the office action mailed 11/7/08 was never received. Since no response has been sent or received, the Application will be abandoned.

Appl. No. 10/595,473
Attorney Docket No. P18906-US1
EUS/J/P/10-3083

EXHIBIT B

<input type="checkbox"/> Patent eBusiness <input type="checkbox"/> Electronic filing <input type="checkbox"/> Patent Application Information (PAIR) <input type="checkbox"/> Patent Ownership <input type="checkbox"/> Fees <input type="checkbox"/> Supplemental Resources & Support		101595.473 Multi-user streaming		New Case Select Application Transaction History Data Image File Wrapper Continuity Published Documents/Address & Assignments Display References Publication Review	
This application is officially maintained in electronic form. To View: Click the desired Document Description. To Download and Print: Check the desired document(s) and click PDF.					
Available Documents					
Patent Guidance and General Info Codes, Rules & Manuals Employees & Office Directories Resources & Public Notices		Hall Room Date Document Code		Document Description Document Category Page Count	

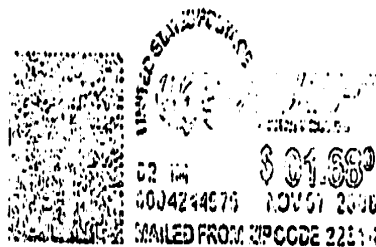
Patent Official Gazette	Patent Searches	Search Patents & Applications	* Search Biological Sequences	* Copies, Products & Services	Other	Copyrights	Trademarks	Policy & Law	Reports				
11-24-2009	EXIN	Summary Record (P101-413)	Abandonment	2	PROSECUTION	11-17-2008	RETMAIL	Mail returned to USPTO as undelivered	Non-final Rejection	PROSECUTION	28	28	28
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11-07-2008	892	list of references cited by examiner		1	PROSECUTION	11-07-2008	BIB	Bibliographic Data Sheet		PROSECUTION	1	1	1
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11-07-2008	FWCLM	Index of Claims		1	PROSECUTION	11-07-2008	SRNT	Examiner's search strategy and results		PROSECUTION	1	1	1
11-07-2008	1449	list of references cited by applicant and considered by examiner		2	PROSECUTION	11-07-2008	1449			PROSECUTION	2	2	2
10-02-2008	10-02-2008	10-02-2008	10-02-2008	10-02-2008	10-02-2008	10-02-2008	10-02-2008	10-02-2008	10-02-2008	10-02-2008	10-02-2008	10-02-2008	10-02-2008
10-02-2008	CLM	Claims		5	PROSECUTION	10-02-2008	REM	Arguments/Remarks Made in an Amendment		PROSECUTION	4	4	4
10-02-2008	N417	ETS Acknowledgment Receipt		2	PROSECUTION	10-02-2008	N417			PROSECUTION	2	2	2
10-02-2008	LET	Miscellaneous Incoming Letter		1	PROSECUTION	10-02-2008	LET			PROSECUTION	1	1	1
10-02-2008	WFEF	Fee Worksheet (P101-875)		1	PROSECUTION	10-02-2008	WFEF			PROSECUTION	1	1	1
08-05-2008	CTFR	Final Rejection		23	PROSECUTION	08-05-2008	CTFR			PROSECUTION	23	23	23
08-05-2008	892	list of references cited by examiner		1	PRIOR ART	08-05-2008	892			PRIOR ART	1	1	1
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08-05-2008	1449	list of references cited by applicant and considered by examiner		2	PRIOR ART	08-05-2008	1449			PRIOR ART	2	2	2
08-05-2008	FWCLM	Index of Claims		1	PROSECUTION	08-05-2008	FWCLM			PROSECUTION	1	1	1
08-05-2008	SRFW	Search information including classification, related notes, categories and other		1	PROSECUTION	08-05-2008	SRFW			PROSECUTION	1	1	1
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11-07-2008	CTNF	Non-final Rejection under review		28	PROSECUTION	11-17-2008	RETMAIL	Mail returned to USPTO as undelivered	Non-final Rejection	PROSECUTION	28	28	28
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Appl. No. 10/595,473
Attorney Docket No. P18906-US1
EUS/J/P/10-3083

EXHIBIT C

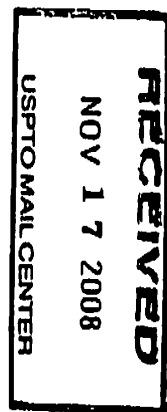


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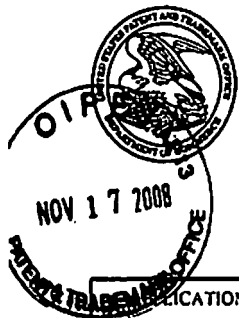
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PENALTY FOR PRIVATE USE, \$300



Appl. No. 10/595,473
Attorney Docket No. P18906-US1
EUS/J/P/10-3083

EXHIBIT D



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,473	10/27/2006	Ralf Keller	P18906-US1	1188

27045 7590 11/07/2008
ERICSSON INC.
6300 LEGACY DRIVE
M/S EVR 1-C-11
PLANO, TX 75024

EXAMINER

TURNER, ASHLEY D

ART UNIT PAPER NUMBER

2454

MAIL DATE DELIVERY MODE

11/07/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication. _

Appl. No. 10/595,473
Attorney Docket No. P18906-US1
EUS/J/P/10-3083

EXHIBIT E

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